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**NOTICE AND REASONABLE EFFORTS FOR
CHILDREN IN CUSTODY ON GROUNDS
OTHER THAN ABUSE OR NEGLECT**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Matt Throckmorton

This act modifies the Judicial Code by amending provisions related to court orders placing a minor into the custody of the Division of Child and Family Services on grounds other than abuse or neglect. The act requires five days notice of hearing to the division. The act requires the court to make certain findings of fact to comply with federal regulations. The act makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

78-3a-118, as last amended by Chapter 149, Laws of Utah 2000

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78-3a-118** is amended to read:

78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.

(1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include the specific offenses for which the minor was adjudicated.

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(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Section 78-11-20.7.

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

(A) his parent or guardian[~~;~~];

(B) the Division of Youth Corrections[~~;~~]; or

(C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or malice as provided in Section 63-30-4; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Youth Corrections, or the Division of Mental Health[~~,-and may~~]; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) Minors who are committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter

3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

(B) Prior to making a recommendation that the court place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the probation department and the court shall provide the division [adequate] with notice [for] of the hearing no later than five days before the time specified for the hearing so the division [to] may attend the hearing.

(C) Prior to committing a minor to the custody of the Division of Child and Family Services, the court shall make a finding that reasonable efforts including family preservation, family counseling, or youth services have been attempted and have failed to prevent the minor's removal from his home.

(d) (i) The court may commit the minor to the Division of Youth Corrections for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth Corrections.

(e) The court may commit the minor, subject to the court retaining continuing jurisdiction over him, to the temporary custody of the Division of Youth Corrections for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Youth Corrections.

(f) (i) The court may commit the minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) Subsection (2)(f) applies only to those minors adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or [for]

(B) contempt of court under Section 78-3a-901. [This commitment may be stayed or suspended upon conditions ordered by the court.]

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency

90 Proceedings.

91 (h) The court may place the minor on a ranch or forestry camp, or similar facility for care
92 and also for work, if possible, if the person, agency, or association operating the facility has been
93 approved or has otherwise complied with all applicable state and local laws. A minor placed in
94 a forestry camp or similar facility may be required to work on fire prevention, forestation and
95 reforestation, recreational works, forest roads, and on other works on or off the grounds of the
96 facility and may be paid wages, subject to the approval of and under conditions set by the court.

97 (i) The court may:

98 (i) order ~~[that]~~ the minor ~~[be required]~~ to repair, replace, or otherwise make restitution for
99 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section
100 78-3a-318~~[-]~~; and ~~[may]~~

101 (ii) impose fines in limited amounts.

102 (j) The court may issue orders necessary for the collection of restitution and fines ordered
103 by the court, including garnishments, wage withholdings, and executions.

104 (k) (i) The court may through its probation department encourage the development of
105 employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i)
106 and for other purposes considered desirable by the court.

107 (ii) Consistent with the order of the court, the probation officer may permit the minor
108 found to be within the jurisdiction of the court to participate in a program of work restitution or
109 compensatory service in lieu of paying part or all of the fine imposed by the court.

110 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition
111 to any other disposition ~~[-]~~ authorized by this section:

112 (A) restrain the minor from driving for periods of time the court considers necessary; and

113 (B) take possession of the minor's driver license. ~~[However, proceedings involving]~~

114 (ii) The court may enter any other disposition under Subsection (2)(l)(i), however, the
115 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by [that
116 section regarding suspension of driving privileges] Section 78-3a-506.

117 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section
118 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia
119 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to
120 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no

more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(n) The court may order that the minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care. For these purposes the court may place the minor in a hospital or other suitable facility.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency [~~as guardian~~] in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of the minor's parents.

(p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

(A) visitation by the parents or one parent;

(B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the minor to be placed in the legal custody of the Division of Mental Health or committed to the physical custody of a local mental health authority, in

accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health.

(r) (i) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has ~~[been found mentally retarded]~~ mental retardation in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center ~~[shall be followed by the juvenile court in these cases]~~ when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a person younger than 18 years of age may not be committed to jail or prison~~[-, and offenses under Section 78-3a-506 are governed by that section regarding suspension of driving privileges].~~

(u) The court may combine ~~[several of the above-listed modes of disposition]~~ the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their ~~[minors]~~ minor. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable minors available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection 78-3a-105(4).

(ii) ~~[Such orders]~~ Orders under Subsection (2)(y)(i):

183 (A) shall remain in effect until the minor reaches majority [~~and~~];
184 (B) are not subject to review under Section 78-3a-119[~~, but~~];
185 (C) may be modified by petition or motion as provided in Section 78-3a-903.
186 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
187 permanent orders of custody and guardianship do not expire with a termination of jurisdiction of
188 the juvenile court.

189 (3) In addition to the dispositions described [~~above~~] in Subsection (2), when a minor
190 comes within the court's jurisdiction he may be given a choice by the [~~judge~~] court to serve in the
191 National Guard in lieu of other sanctions, provided:

192 (a) the minor meets the current entrance qualifications for service in the National Guard
193 as determined by a recruiter, whose determination is final;

194 (b) the minor is not under the jurisdiction of the court for any act that:

195 (i) would be a felony if committed by an adult;

196 (ii) is a violation of Title 58, Chapter 37, Controlled Substances; or

197 (iii) was committed with a weapon; and

198 (c) the court retains jurisdiction over the minor under conditions set by the [~~juvenile~~] court
199 [~~judge~~] and agreed upon by the recruiter or the unit commander to which the minor is eventually
200 assigned [~~to~~].

Legislative Review Note
as of 1-10-01 4:19 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel